



March 29, 1999

Ms. Lilia Ledesma-Gonzalez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR99-0876

Dear Ms. Ledesma-Gonzalez:

This will acknowledge receipt of your letter of March 17, 1999 requesting a decision from this office under the Texas Open Records Act, chapter 552 of the Government Code. This correspondence has been assigned ID# 124907. Please reference this ID number in the event you send any further correspondence with respect to this matter.

The City of McAllen (the "city") received a subpoena from Van Huseman, an attorney, ordering the custodian of records of the city police department board to produce photographs and videotapes relating to an accident which is the subject of litigation in the 332nd District Court, Hidalgo County. You appear to have treated the subpoena as a request under the Texas Open Records Act. You seek to withhold the requested information pursuant to section 552.108 of the Government Code.

The requested information is not being sought pursuant to the Open Records Act, but rather pursuant to Rule 176 *et seq.* of the Rules of Civil Procedure. The appropriate forum for determining whether the information in question must be released is the trial court. *See also* Gov't Code § 552.005 (Open Records Act does not affect scope of discovery). This office therefore, declines to issue an open records ruling regarding this matter.

Yours very truly,

William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 124907

Encl: Submitted documents

cc: Ms. Jackie Fralick
Apex Document Management
4421 North McColl Road
McAllen, Texas 78504
(w/o enclosures)